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ATTORNEY FOR APPELLANT:

ELIZABETH A. GABIG
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARA McCABE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM BOYD,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0608-CR-462
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0405-FB-084988

June 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

William Boyd appeals his convictions for sexual battery as a class D felony¹ and battery as a class A misdemeanor.² Boyd raises one issue, which we restate as whether the evidence is sufficient to sustain his convictions. We affirm.

The facts most favorable to Boyd's convictions follow. In May 2004, Alicia Lowe was at a bar with friends and met Boyd. Lowe and Boyd exchanged telephone numbers. In the early morning hours of May 16, 2004, Lowe called Boyd and invited him to her brother's house where she was drinking with her brother and his girlfriend. Lowe also asked Boyd to stop at the liquor store and get more beer. When Boyd arrived with the beer, Lowe took him inside to the kitchen to put the beer in the refrigerator. As they were in the kitchen, Boyd started to grab and hug Lowe, and she "made [herself] unavailable" because she "just wasn't comfortable with it." Transcript at 135. They then went back outside with Lowe's brother and girlfriend and continued drinking. Later, Lowe asked Boyd to take her to the store for cigarettes. Boyd agreed but said that he wanted to stop by his house to get money.

They stopped at Boyd's house and went inside, and Boyd locked the door. Lowe got scared when she saw him lock the door because she "figured he had other plans, that [she] didn't." Id. at 141. Lowe sat down on the couch, and Boyd sat down next to her and started kissing her on her neck and face. Lowe kept trying to stand up and get away

¹ Ind. Code § 35-42-4-8 (2004).

² Ind. Code § 35-42-2-1(a)(1)(A) (2004) (subsequently amended by Pub. L. No. 2-2005, § 125 (eff. April 25, 2005)).

from him. When Boyd started putting his hands up Lowe's shirt, Lowe told him that she "didn't want to do this." Id. at 141. Boyd "started getting mean and hateful" and hit Lowe on the face near her mouth. Id. at 142. Lowe struggled with Boyd, but he got her shirt off and started kissing her breasts. Lowe realized that "this [was] not going to end good," and convinced him to let her use the bathroom. Id. at 144-145. She then escaped out the bathroom window and obtained help from a neighbor.

The State charged Boyd with attempted rape as a class B felony,³ sexual battery as a class D felony, and battery as a class A misdemeanor. The jury found Boyd not guilty of attempted rape but guilty of sexual battery as a class D felony and battery as a class A misdemeanor. The trial court sentenced Boyd to three years in the Indiana Department of Correction on the sexual battery conviction and suspended one and 1/2 years of the sentence to probation. The trial court sentenced Boyd to one year for the battery conviction and ordered that the sentences be served concurrently.

The issue is whether the evidence is sufficient to sustain Boyd's convictions for sexual battery as a class D felony and battery as a class A misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of

³ Ind. Code §§ 35-41-5-1 (2004); 35-42-4-1 (2004).

probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

A. Sexual Battery.

The offense of sexual battery as a class D felony is governed by Ind. Code § 35-42-4-8(a), which provides:

A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touches another person when that person is:

- (1) compelled to submit to the touching by force or the imminent threat of force; or
- (2) so mentally disabled or deficient that consent to the touching cannot be given;

commits sexual battery, a Class D felony.

The State charged that Boyd “did knowingly with the intent to satisfy the sexual desires of [Boyd] touch [Lowe] that is: placed his mouth on her breast, when [Lowe] was compelled by force or the threat of force to comply.” Appellant’s Appendix at 39.

Boyd argues that the evidence is insufficient to show that he compelled Lowe to submit to the touching by force or the imminent threat of force. Although an element of the offense of sexual battery is that the victim was “compelled to submit to the touching by force or the imminent threat of force,” the force need not be physical or violent, but may be implied from the circumstances. Scott-Gordon v. State, 579 N.E.2d 602, 604 (Ind. 1991). Evidence that a victim did not voluntarily consent to a touching does not, in itself, support the conclusion that the defendant compelled the victim to submit to the touching by force or threat of force. Bailey v. State, 764 N.E.2d 728, 730 (Ind. Ct. App.

2002), trans. denied. However, “it is the victim’s perspective, not the assailant’s, from which the presence or absence of forceful compulsion is to be determined.” Tobias v. State, 666 N.E.2d 68, 72 (Ind. 1996). “This is a subjective test that looks to the victim’s perception of the circumstances surrounding the incident in question.” Id. “The issue is thus whether the victim perceived the aggressor’s force or imminent threat of force as compelling her compliance.” Id.

In support of his argument regarding the sufficiency of the evidence to show that Lowe was compelled to submit to the touching by force or the imminent threat of force, Boyd relies upon Smith v. State, 678 N.E.2d 1152 (Ind. Ct. App. 1997), reh’g denied, trans. denied. In Smith, the defendant was charged with sexual battery for unbuttoning the victim’s pants and grabbing and fondling the victim’s penis. 678 N.E.2d at 1155. The victim testified that he had no reason to be afraid of the defendant before the incident. Id. The victim also testified that he did not say anything to the defendant while he was fondling him because he “didn’t know what to do.” Id. This court held that “[a]lthough it is clear that [the victim] did not consent to the touching, evidence that a victim did not voluntarily consent to a touching does not, in itself, support the conclusion that the defendant compelled the victim to submit to the touching by force or threat of force.” Id. We concluded that “there is no evidence that [the victim] was compelled to submit to Smith’s touching by force or the imminent threat of force.” Id.

According to Boyd, Lowe’s testimony was not clear enough to show that any force or imminent threat of force preceded his kissing her breast. We disagree. Lowe’s

testimony indicates that Boyd hit her on the face and struggled with her prior to kissing her breast. Lowe testified that Boyd sat down on the couch with her, started trying to kiss her, and put his hands up her shirt. When she refused him, Boyd got “mean and hateful” and hit her on the face. Transcript at 142. They struggled, and Boyd got her shirt off and kissed her breast area. Id. at 144-145. We conclude that the State presented evidence of probative value from which a reasonable jury could have found Boyd guilty beyond a reasonable doubt of sexual battery as a class D felony. See, e.g., J.J.M. v. State, 779 N.E.2d 602, 606 (Ind. Ct. App. 2002) (holding that the evidence was sufficient to sustain the juvenile’s adjudication of delinquency for sexual battery, a class D felony, if committed by an adult).

B. Battery.

The offense of battery as a class A misdemeanor is governed by Ind. Code § 35-42-2-1(a)(1) provides: “A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is: (1) a Class A misdemeanor if: (A) it results in bodily injury to any other person” The State charged that Boyd “did knowingly in a rude, insolent or angry manner touch [Lowe] and further that said touching resulted in bodily injury to the other person, specifically: physical pain and/or bleeding from the mouth.” Appellant’s Appendix at 39.

Boyd argues that the evidence is insufficient to show that Lowe’s injury to her mouth was caused by him. According to Boyd, the injury could have been caused by

Lowe jumping from the bathroom window or running through the neighborhood. Boyd's argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Jordan, 656 N.E.2d at 817. Lowe testified that Boyd hit her on the face near her mouth, and photographs admitted at trial show an injury to Lowe's mouth. We conclude that the State presented evidence of probative value from which a reasonable jury could have found Boyd guilty beyond a reasonable doubt of battery as a class A misdemeanor. See, e.g., Cooper v. State, 831 N.E.2d 1247, 1251 (Ind. Ct. App. 2005) (holding that the evidence was sufficient to sustain the mother's conviction for battery upon a child despite the mother's argument that he sustained the injury as an accident during the administration of "proper and reasonable chastisement to her child"), reh'g denied, trans. denied.

For the foregoing reasons, we affirm Boyd's convictions for sexual battery as a class D felony and battery as a class A misdemeanor.

Affirmed.

SULLIVAN, J. and CRONE, J. concur